IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 600

RED LION BROADCASTING CO., INC. and
REVEREND JOHN M. NORRIS, *Petitioners*,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA, *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MOTION FOR LEAVE TO PRESENT ORAL ARGUMENT ON BEHALF OF RADIO TELEVISION NEWS DIRECTORS ASSOCIATION, ET AL. AS AMICI CURIAE

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1. Pursuant to Rule 44(7) of the Rules of this Court, movants (the *"amici"*) request that leave be granted for one-half hour of oral argument on behalf of the

amici, in addition to the time for argument allotted to petitioners.

2. This motion is made on behalf of Radio Television News Directors Association and eight licensees of radio and television stations[1] (hereinafter "RTNDA, *et al.*"); Columbia Broadcasting System, Inc. ("CBS"); and National Broadcasting Company, Inc. ("NBC"). If this motion is granted, the oral argument on behalf of all of them will be presented by Archibald Cox, Esq.

3. On December 4, 1967, when certiorari was granted in *Red Lion*, the *amici* were parties to three consolidated cases in the United States Court of Appeals for the Seventh Circuit, in which they sought review of the new "personal attack" and "political editorial" rules adopted by the Commission.[2] On January 6, 1968, the *amici* filed a petition for a writ of certiorari before judgment to the Seventh Circuit (*Radio Television News Directors Association* v. *United States*, No. 993, this Term). Respondents have conceded that the Seventh Circuit cases present the same fundamental issues of the constitutionality and statutory basis of the Commission's fairness and personal attack policies as does *Red Lion*.

4. If the petition for certiorari before judgment is granted, a grant of this motion will be unnecessary, and the moving parties will forego *amicus* participation

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[1] Bedford Broadcasting Corporation, Central Broadcasting Corporation, The Evening News Association, Marion Radio Corporation, RKO General, Inc., Royal Street Corporation, Roywood Corporation, and Time-Life Broadcast, Inc.

[2] FCC Rules and Regulations, §§ 73.123, 73.300, 73.598 and 73.679, 32 Fed. Reg. 10303-06, as amended at 11532 (1967).

here, since they can be fully heard in No. 993. Otherwise, RTNDA, *et al.*, CBS and NBC will each file an *amicus* brief in this case urging reversal of the judgment below. The *amici* have been advised by counsel for respondents and petitioners that they will consent to the filing of briefs by the *amici*.

5. The *amici* have requested that counsel for petitioners agree to share with them the time allotted for argument on behalf of the petitioners; that request has been refused. We are authorized to state, however, that counsel for petitioners has no objection to the grant of this motion.

6. The Commission's fairness and personal attack policies pose fundamental First Amendment issues. The issues have great practical importance in the day-to-day operations of stations, networks, journalists and others engaged in broadcasting. We respectfully submit that in deciding this case the Court should be aware of the total impact of the Commission's policies upon broadcast discussion of public issues and the effect which this Court's decision is likely to have on the entire industry.

7. Petitioner Red Lion is a single AM-FM broadcast licensee operating in a small Pennsylvania community. It is not, we believe, representative of broadcasters generally. Nor are the particular facts of this case typical of the fact situations which are constantly being presented to the Commission for action under its fairness and personal attack policies. It cannot be assumed that the defense made by this single licensee will lay bare the full ramifications of the Commission's policies or their impact upon members of the industry other than Red Lion.

8. In deciding issues so charged with consequences for the entire broadcast industry, the Court would be assisted, we submit, by hearing oral argument not only on behalf of this single licensee, but also on behalf of a substantial segment of the industry. We recognize that our argument as *amici* would have to be directed to the issues in the *Red Lion* case; that is the reason we believe that grant of the petition for certiorari in No. 993 would best assure the full presentation of the interrelated questions in the two cases. But even within the limitations of the precise issues in *Red Lion*, we believe that the *amici* can illuminate the broader implications of those issues in a manner helpful to the Court.

9. The *amici* constitute a considerable segment of the broadcasting industry. CBS and NBC operate both nationwide radio and television networks and individual television and radio stations scattered across the country. RTNDA is a non-profit, unincorporated association of more than 1,000 news directors and other persons actively engaged in the reporting, writing or editing of news for radio and television stations or networks in the United States and Canada. And the other eight *amici* are licensees of 39 radio and television stations located in large and small communities throughout the United States. The views of the *amici* are thus broadly representative of the industry as a whole.

WHEREFORE, the *amici* respectfully request that, unless this Court grants their petition for certiorari before judgment in No. 993, this Term, it grant them

leave under Rule 44(7) to present oral argument in this case for one-half hour.

Respectfully submitted,

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